

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8109 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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SHASHANKBHAI RANJIKANT PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR BP DALAL for Petitioner

Ms AMI YAGNIK, AGP for the Respondents

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/02/99

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case the matter is taken up for final disposal today.

2. In this petition under Articles 226 and 227 of the Constitution, the petitioner has challenged the order dated 3/6-5-94 passed by the Collector, Kheda as confirmed by the Additional Chief Secretary (Appeals) in the Revenue Department of the State Government by his order dated 2.5.1998 in revision application No.

SRD/29/94 under Section 66 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the Code") cancelling the non-agricultural use permission granted by the Collector on 2.12.1988 in respect of land bearing survey No. 1515 in Umreth town in Kheda district. By the said order, the authorities also called upon the petitioner to remove the construction put up on the said land.

3. The petitioner herein was the owner of the land in question and had submitted lay-out plan for getting N.A. permission. The N.A. permission was granted and the lay-out plan as proposed by the petitioner initially was approved as per the order dated 2.12.1988 passed by the Collector. In that lay-out plan there were 10 plots in "A" Category and 16 plots in "B" category. There was a common plot admeasuring 4045.25 sq.mtrs. and over and above the petitioner himself had kept one plot admeasuring 208.80 sq.mtrs. for himself. The petitioner himself is carrying on the business of constructing residential units and, therefore, the petitioner had applied to the Deputy Town Planner, Nadiad for sanctioning the revised lay-out plan. That application was made on 21.8.1989 and by order dated 6.9.1992 (Annexure "G"), the Deputy Town Planner, Nadiad sanctioned the revised lay-out plan. As per the revised lay-out plan there are in all 20 plots and one common plot admeasuring 375 sq.mtrs. That sanction for the revised lay-out plan is produced at Annexure "G" to the petition. In the meantime, the petitioner had sold 19 out of the 20 plots by registered sale deeds and those purchasers had put up construction on the respective plots purchased by them.

4. In the year 1989, the Collector, Kheda issued show cause notice to the petitioner to show cause why the N.A. permission should not be cancelled as the construction put up was not in accordance with the lay-out plan sanctioned by the Collector and no revised lay-out plan was submitted to the Collector. When the notice was received by the petitioner in 1989, on the one hand the petitioner sent a reply dated 14.8.1989 to the Collector stating that an application was already made to the Deputy Town Planner, Nadiad for sanctioning the revised lay-out plan and that the revised plan shall be submitted to the Collector as and when sanctioned by the Deputy Town Planner and on the other hand the petitioner also applied to the Collector on 14.8.1989 for sanctioning the revised lay-out plan but the said application was rejected by the Collector's order dated 12.9.1989 (Annexure "F") on the grounds mentioned

therein. Thereafter the Deputy Town Planner sanctioned the revised lay-out plan on 6.9.1992 as stated above and sent a copy of his communication dated 6.9.1992 (Annexure "G") to the Collector, Kheda. Thereafter the Collector passed the impugned order dated 3/6.5.94 holding that the construction was in violation of the lay-out plan which was sanctioned while granting the N.A. permission. The revisional authority has confirmed the said order. It is against the aforesaid orders that the present petition is filed.

5. At the hearing of this petition, the learned counsel for the petitioner submitted that when the Deputy Town Planner sanctioned the revised lay-out plan and sent a copy of the communication dated 6.9.1992 to the Collector as well as to the Umreth Nagar Palika, the petitioner was of the bona fide belief that the objection of the Collector about the revised lay-out plan being not sanctioned would not survive. It is further submitted that in any view of the matter, even if the sanction of the Collector was required for the revised lay-out plan after the permission granted by the Deputy Town Planner, Nadiad, the objection can be removed even now as the revised lay-out plan was not contrary to any statutory provision and the sanction can be granted by the Collector ex-post facto also. The learned counsel has further submitted that the plots in question are now owned and possessed by the purchasers who have constructed their own residential units and, therefore, if the impugned orders are permitted to hold the field, the houses constructed by the transferees will be demolished without any advantage to any person whereas no prejudice would be caused to any party if a fresh application is permitted to be made to the Collector and the Collector is directed to consider the same sympathetically.

6. On the other hand, the learned AGP submitted that since the petitioner did not submit application for sanctioning the revised lay-out plan despite opportunities given by the Collector, the impugned orders passed by the Collector and confirmed by the Additional Chief Secretary should be upheld.

6. Having heard the learned counsel for the parties, the Court is of the view that since the rights of innocent third parties are involved as the lands are owned and possessed by the persons who purchased the lands from the petitioner and who have formed a co-operative housing society called "Sashang Park Co-operative Housing Society Ltd." and they have already

constructed their residential units and since it is not shown that the revised lay-out plan sanctioned by the Dy. Town Planner in 1992 is contrary to any statutory provision except that the permission of the Collector was not obtained and also since the Deputy Town Planner, Nadiad had sanctioned the revised lay-out plan after finding that the same is in accordance with the zoning regulations of the development scheme, interests of justice would be served if the impugned orders of the Collector and the Additional Chief Secretary are set aside with a direction that the petitioner shall submit an application to the Collector, Kheda for sanctioning the revised lay-out plan within one month from today setting out all the relevant facts and circumstances and the Collector is directed to decide the said application within three months from the date of receipt of the application. In order to see that the innocent third parties are not prejudiced by any decision of the Collector hereinafter, it would also be just and proper to direct that before taking any final decision in the matter, the Collector shall also issue notice to the Chairman and Secretary of the Sashang Park Co-operative Housing Society Ltd. whose members are residing in the residential units constructed on the land in question.

7. The petition is accordingly allowed. The impugned order dated 6.6.1994 passed by the Collector, Kheda (Annexure "C" to the petition) and the order dated 24.4.1988 passed by the Additional Chief Secretary (Appeals) in the Revenue Department of the State Government so also the consequential notice dated 13.7.1998 issued by the Deputy Mamlatdar (Annexure H) calling upon the petitioner to remove the construction on the land in question are quashed and set aside with the following directions :-

- (i) The petitioner shall submit an application to the Collector, Kheda for sanctioning the revised lay-out plan approved by the Dy. Town Planner in 1992 within one month from today setting out all the relevant facts and circumstances and the Collector shall decide the said application within three months from the date of receipt of the application.
- (ii) In order to see that the innocent third parties are not prejudiced by any decision of the Collector, it is directed that before taking any final adverse decision in the matter, the Collector shall also issue notice to the Chairman and Secretary of the Sashang Park Co-operative

Housing Society Ltd. whose members are residing  
in the residential units constructed on the land  
in question.

8. Rule is accordingly made absolute with no order  
as to costs.

Sd/-

February 4, 1999 (M.S. Shah, J.)

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